

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IRON WORKERS S. LOUIS DISTRICT)
COUNCIL ANNUITY TRUST, et al.,)
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Plaintiffs,)
)
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vs.) Case No. 4:14CV02066 AGF
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)
INNOVATIVE CONCRETE, LLC,)
)
)
Defendant.)

MEMORANDUM AND ORDER TO SHOW CAUSE

This matter is before the Court on Plaintiffs' motion for a finding of civil contempt and sanctions against Defendant Innovative Concrete, LLC., and its "principal officer." Plaintiffs brought this action under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132, to collect delinquent fringe benefit contributions. On February 9, 2015, the Clerk of Court entered default against Defendant. By Order dated February 11, 2015, the Court granted Plaintiffs' unopposed motion to compel an accounting, and ordered Defendant to submit its payroll registers, and other documents needed to perform an audit, to an auditor of Plaintiffs' choice, within 21 days of the date of the Order. The Court cautioned Defendant that failure to do so might result in a finding of civil contempt against Defendant and the imposition of sanctions including a fine and/or incarceration. The Court ordered Plaintiffs to effect service of the February 11, 2015 on Defendant by the means they believed to be most effective, and to file a certificate of such service.

The March 17, 2015, Plaintiffs filed the present motion for a finding of contempt against Defendant. In support of the motion, Plaintiffs have submitted the affidavit of their counsel, also dated March 17, 2015, that on February 12, 2015, he mailed a copy of the February 11, 2015 Order to Defendant and that as of the date of the affidavit, Defendant had not complied with the Order compelling an accounting. Plaintiffs request the imposition of a fine of \$200 a day for each day of noncompliance, and a writ of body attachment issued for Defendant's principal officer.

Such relief could well be appropriate. Civil contempt proceedings may be employed in an ERISA case such as this to coerce the defendant into compliance with a court order or to compensate the complainant for losses sustained or both. *Chicago Truck Drivers v. Bhd. Labor Leasing*, 207 F.3d 500, 504 (8th Cir. 2000). The Court's contempt power also extends to non-parties who have notice of the Court's order and the responsibility to comply with it. *Id.* at 505 (holding that the district court's payment orders in an ERISA case were binding upon the corporate defendant's sole shareholder and corporate officer and agent who had notice of it, even though the order made no specific reference to him); *Greater St. Louis Const. Laborers Welfare Fund v. Mertens Plumbing & Mech. Inc.*, No. 4:05CV2266 CDP, 2008 WL 2224791, at *2 (E.D. Mo. May 27, 2008); *Carpenters' Dist. Council of St. Louis & Vicinity v. DLR Opportunities, Inc.*, No. 4:07-CV-61 CAS, 2008 WL 163590, at *1 (E.D. Mo. Jan. 17, 2008).

Here, however, Plaintiffs have not provided the Court with proof of the name and address of Defendant's "principal officer," or with proof that he or she was personally apprised of the Court's February 11, 2015 Order. Although the record includes the name

and address of Defendant's registered agent, it is not clear from the record that he has the responsibility to comply with the Court's Order.

Accordingly,

IT IS HEREBY ORDERED Defendant Innovative Concrete, LLC, shall have up to and including **April 7, 2015**, to show the Court why it should not be held in civil contempt and sanctions imposed against it for failure to comply with the Court's Order of February 11, 2015.

IT IS FURTHER ORDERED that should Plaintiffs wish the Court to find a particular individual in civil contempt and impose sanctions against him or her, along with the named corporate Defendant, Plaintiffs shall provide the Court, on or before **April 7, 2015**, with the proof set forth above.

IT IS FURTHER ORDERED that the Clerk of Court shall serve a copy of this Order on Defendant Innovative Concrete, LLC, at the address reflected in the record.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 30th day of March, 2015.